

IN THE SUPREME COURT OF IOWA

IN RE THE DETENTION OF) SUPREME COURT NO. 16-1732
)
NICHOLAS WYGLE,)
 Respondent-Appellant.)

INTERLOCUTORY APPEAL FROM

THE IOWA DISTRICT COURT FOR BUTLER COUNTY

HONORABLE JUDGE , DEDRA SCHROEDER

APPELLANT'S FINAL BRIEF AND ARGUMENT

AND

REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF SERVICE AND FILING

On the 24th day of April, 2017, the undersigned did serve the within Appellant's Final Brief And Request for Oral Argument on all other parties to this appeal through EDMS and by electronic transmission to CAmail@ag.state.ia.us, and upon the Respondent-Appellant by Regular United States Mail.

I further certify that on April 24th, 2017, I will electronically file this document through EDMS with the Clerk of the Iowa Supreme Court, Iowa Judicial Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

UNDER IOWA CODE SECTION 229A.4(1), MUST A PERSON BE TOTALLY CONFINED IN PRISON TO BE DEEMED TO BE “PRESENTLY CONFINED”

Authorities

Cases

In Re the Detention of Betsworth, 711 N.W.2d 280 (Iowa 2006)

In Re the Detention of Geltz, 840 N.W.2d (Iowa 2013)

In Re the Detention of Gonzales, 658 N.W.2d 102 (Iowa 2003)

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Statutes and Court Rules

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Iowa Code section 229A.5(2)

Iowa Code section 903B.2

ROUTING STATEMENT

This case presents a substantial issue of first impression. Specifically, this case addresses the issue of whether the State may file a petition under Iowa’s Sexually Violent Predator Act, Iowa Code chapter 229A, against a person who has been released from total confinement and in the absence of pleading and proof of a recent overt act. The Supreme Court should therefore retain this case.

STATEMENT OF THE CASE

Nature of the Case: This is an interlocutory appeal filed by Respondent-Appellant Nicholas Wygle (hereafter “Wygle”) from the

October 11, 2016 order of the district court which denied his Motion to Dismiss the State's petition under Iowa Code chapter 229A.

Course of Proceedings and Disposition in District Court: On March 14, 2016, the State filed its petition to have Wygle civilly committed under Iowa Code chapter 229A. (Petition)(App. p. 6). At the time the petition was filed, Wygle was residing at the Curt Forbes Residential Facility in Ames, Iowa serving a chapter 903B special sentence. (*Id.*, State's Resistance to Motion to Dismiss) (App. P. 23). He had discharged his underlying sexual offense and was released from prison on August 7, 2015. (Motion to Dismiss, paragraph 2)(App. P. 18), (State's Statement of Probable Cause)(App. P. 1).

On March 21, 2016, a probable cause hearing was held pursuant to Iowa Code section 229A.5(2), and the district court entered an order finding probable cause on said date. (Order Finding Probable Cause)(App. p. 9).

On August 30, 2016 Wygle filed his Motion to Dismiss alleging that the State's petition was improperly filed, and the district court lacked subject matter jurisdiction, because Wygle was no longer "totally

confined". Therefore, he was no longer confined for a sexually violent offense. Hearing on the motion to dismiss was held on October 3, 2016, and October 11, 2016, the district court denied the motion. (Order dated October 11, 2016)(App. p. 26).

On October 13, 2016, Wygle filed his application for interlocutory appeal, which was granted on November 1, 2016. (Application for Interlocutory Appeal, Order Granting Interlocutory Appeal)(App. pp. 28, 37).

Statement of Facts: On or about February 16, 2012, Wygle was convicted of Assault with intent to Commit Sexual Abuse in the Iowa District Court for Butler County in case FECR009093. (Petition)(App. P. 6). The State also filed a Statement of Probable Cause. In said document, it asserted that Wygle was convicted on or about July 13, 2012. Wygle was sentenced to serve an indeterminate term of incarceration not to exceed two (2) years, and was sentenced to serve a ten (10) year special sentence under Iowa Code chapter 903B. (Statement of Probable Cause)(App. P. 1).

On August 7, 2015, Wygle was released from prison having discharged his indeterminate sentence of incarceration. (Motion to

Dismiss, paragraph 2)(App. P. 18), (State’s Statement of Probable Cause)(App. P. 1). He boarded a commercial bus and rode the bus to Cedar Rapids, Iowa, where he changed buses and travelled to Marshalltown, Iowa to the residential facility there. Ultimately he transferred to the Kurt Forbes Residential facility in Ames, Iowa. (Motion to Dismiss, paragraph 2)(App. p. 18).

ARGUMENT

THE DISTRICT COURT ERRED WHEN IT FOUND THAT WYGLE WAS “PRESENTLY CONFINED” WHEN HE WAS NO LONGER TOTALLY CONFINED

Standard of Review. The district court’s construction of Iowa Code chapter 229A is reviewed for errors at law. *In Re the Detention of Geltz*, 840 N.W.2d 273 (Iowa 2013).

Preservation of Error: This issue was preserved by Wygle in his motion to dismiss which was ruled upon by the district court. (Order dated October 11, 2016)(App. p. 26).

Discussion: Iowa Code section 229A.4 governs the State's petition for civil commitment. Section 229A.4 “plots two separate courses for the

civil commitment of a sexually violent predator.” *In re Detention of Stenzel*, 827 N.W.2d 690, 697 (Iowa 2013). In the first course, the State may only seek civil commitment of a person who is not confined but who has committed a recent overt act. Iowa Code § 229A.4(2). The second applies to persons who are presently confined. Section 229A.4(1). *Id.* The confinement described in section 229A.4(1) must be confinement for a sexually violent offense. *In Re the Detention of Gonzales*, 658 N.W.2d 102, 104 (Iowa 2003).

In the present case, the State filed its petition against Wygle under Iowa Code section 229A.4(1), alleging that he was “presently confined”. The State has made no claim under section 229A.4(2) that Wygle committed a recent overt act.

Before the district court, the State argued that Wygle was serving a sentence for his commission of a sexually violent offense – the special sentence under Iowa Code chapter 903B – so he therefore satisfied the *presently confined* requirement. Wygle agrees that at the time the State filed its petition under Iowa Code chapter 229A, he was serving a sentence imposed for his commission of a sexually violent offense. Moreover,

Wygle agrees that he was serving said sentence while living at the Kurt Forbes Residential Facility. Wygle does not agree, however, that this set of circumstances satisfies the chapter 229A.4(1) requirement that he be *presently confined*. He asserts that it is his state of confinement that controls the issue rather than whether he is serving a sentence. He further asserts that this is evident from the plain meaning of chapter 229A. When interpreting a statute, the Court's primary goal "is to give effect to the intent of the legislature." *In re the Detention of Betsworth*, 711 N.W.2d 280, 283 (Iowa 2006). The Court looks "first and foremost to the language it chose in creating the act." *In Re the Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003). "We read the statute as a whole and give it its plain and obvious meaning, a sensible and logical construction, which does not create an impractical or absurd result." *Id.* (citation and internal quotation marks omitted).

Iowa Code chapter 229A was enacted in 1998 to address specific safety and treatment concerns about a small but dangerous group of sexual offenders identified as sexually violent predators:

The general assembly finds that a small but extremely dangerous group of sexually violent predators exists

which is made up of persons who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment provisions for mentally ill persons under chapter 229, since that chapter is intended to provide short-term treatment to persons with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 229, sexually violent predators generally have antisocial personality features that are unamenable to existing mental illness treatment modalities and that render them likely to engage in sexually violent behavior. The general assembly finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high and that the existing involuntary commitment procedure under chapter 229 is inadequate to address the risk these sexually violent predators pose to society.

The general assembly further finds that the prognosis for rehabilitating sexually violent predators in a **prison** setting is poor, because the treatment needs of this population are very long-term, and the treatment modalities for this population are very different from the traditional treatment modalities available in a **prison** setting or for persons appropriate for commitment under chapter 229. Therefore, the general assembly finds that a civil commitment procedure for the long-term care and treatment of the sexually violent predator is necessary. The procedures regarding sexually violent predators should reflect legitimate public safety concerns, while providing treatment services designed to benefit sexually violent predators who are civilly committed. The procedures should also reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful

participation of sexually violent predators in treatment programs.

Iowa Code section 229A.1 (emphasis added).

The process of civil commitment under chapter 229A.4(1) begins when the agency with jurisdiction over the individual gives written notice to the attorney general and a multidisciplinary team that a person currently confined may meet the definition of an SVP. *In re the Detention. of Mead*, 790 N.W.2d 104, 107-08 (Iowa 2010). “The written notice must be provided prior to [t]he *anticipated discharge* of a person who has been convicted of a sexually violent offense from *total confinement*, except that in the case of a person who is returned to prison for no more than ninety days as a result of revocation of parole, written notice shall be given as soon as practicable following the person's readmission to prison.” *In re the Detention of West*, 829 N.W.2d 589 (Table) (Iowa Ct. App. 2013)(citing Iowa Code §229A.3(1)(a) (emphasis in original; underlining added).

It is clear from a plain reading of the foregoing, specifically the legislature’s use of the word “prison”, and the phrases “total confinement”, “returned to prison”, and “readmission to prison”, that chapter 229A was created out of concerns for society and the sexual offender that arise only

when the sexual offender is released from prison. It is also clear that the legislature sought to address those concerns by developing a process for continued confinement and treatment to begin while the person is still in total confinement serving a sentence of imprisonment but nearing the end of the same. The legislature intended that “confined” meant *total confinement*, which in turn meant *prison*. Because Wygle was not totally confined in prison, the State’s chapter 229A petition against him was improper and should have been dismissed.

Similarly, pursuant to Iowa Code section 903B.2, a special sentence begins after the completion of any applicable criminal sentence imposed, such as imprisonment, and the person shall begin the special sentence as if on parole or work release. Parole or work release is clearly not imprisonment and is not “total confinement”. Moreover, in the event of a violation of the special sentence, a revocation of release may be ordered and the person imprisoned for not more than two years. Again, the legislature signaled its intent that a release on a special sentence, a violation of which can result in imprisonment, is not imprisonment itself. Thus it cannot be “total confinement”.

When discussing the necessity for proof of a recent overt act under the requirements of due process, the Iowa Court of Appeals made a similar distinction when it quoted with approval the Washington Supreme Court in *In re Det. of Lewis*, 177 P.3d 708, 713–14 (Wash.2008):

. . . the Washington Supreme Court held that proof of a recent overt act is necessary only where a sexually violent offender *has been released from total confinement and spent time in the community*.

The *Lewis* court reasoned: Most offenders are incarcerated and have not been in the community since their predicate offense conviction when the State files the petition. Under such circumstances, where the State lacks an opportunity to prove present dangerousness with evidence of a recent overt act, the statute and our case law relieve the State of pleading and proving a recent overt act.

In re the Detention of Johnson, 819 N.W.2d 426 (Table) (Iowa Ct. App. 2012)
(emphasis added.)

In 2013, the Iowa Court of Appeals addressed the timing of a chapter 229A petition for a person who, like Wygle, had been ordered to serve a special sentence under Iowa Code chapter 903B. *In Re the Detention of West*, 829 N.W.2d 589 (Table) (Iowa Ct. App. 2013). Unlike Wygle, however, West

had not yet been released from prison at the time the State filed its 229A petition against him.

West asserted, in part, that chapter 903B and chapter 229A conflicted, and that he could not be civilly committed under chapter 229A because he still had to serve his special sentence under chapter 903B. Section 903B provides in pertinent part:

A person convicted of a misdemeanor or a class “D” felony offense under chapter 709 ... shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for a period of ten years, with eligibility for parole as provided in chapter 906.... *The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole*

West, 829 N.W.2d at 2 (emphasis in original). Deciding that “West misse[d] the important phrase ‘total confinement’” in section 229A.3(1)(a), the Court of Appeals then defined “total confinement”:

Confine” is defined as “to keep in narrow quarters: IMPRISON.” Webster's Third New International Dictionary 476 (2002). For legal purposes, the term “confinement” is defined in Black's Law Dictionary 318 (8th ed.2004), as “[t]he act of imprisoning or restraining someone; the state of being imprisoned or restrained.” The term “total” is defined as “[w]hole; not divided; full, complete.” Black's Law Dictionary 1528 (8th ed.2004). Putting the two words

together, using their ordinary definitions, “total confinement” means complete or full imprisonment. Thus, it is the anticipation of being discharged from complete imprisonment, not discharge of a sentence, that gives rise to commencement of the SVP commitment process. This is consistent with the legislative findings made when chapter 229A was enacted. Iowa Code § 229A.1; *see In re Det. Of Stenzel*, 827 N.W.2d 690, ---- 2013 WL 765319, at *8 (Iowa 2013) (“In other words, section 229.3 contemplates that the first steps in the SVP process that precede the filing of a petition may occur no later than ninety days before the discharge of a person from prison.”). Reading the two statutes together, section 903B.2 does not alter the section 229A.3(1)(a) requirement that the potential SVP must be close to discharging the total confinement portion of his sentence imposed for his conviction of a sexually violent offense. *See id.* §§ 229A.3(1)(a), 903B.2. Given the legislature's intent to protect the community by keeping SVPs in secure facilities, it makes sense that such a petition should be filed *before* a potential SVP is released into society, even if the anticipated release is subject to parole, probation, or any other kind of supervision.

Id. at 3 (Emphasis in original).

The Iowa Court of Appeals interpreted the same language at issue in the present case, albeit from a different perspective. The difference in perspectives, however, does not change the Court of Appeals’ holding.

“Given the legislature's intent to protect the community by keeping SVPs in secure facilities, it makes sense that such a petition should be filed *before* a potential SVP is released into society, even if the anticipated release is subject to parole, probation, or any other kind of supervision.”

CONCLUSION

Iowa Code chapter 229A allows a petition to be filed in two circumstances – when a person is “confined” for a sexually violent offense, and when a person is not confined but has committed a recent overt act of a sexually violent nature. In the present case, the State has alleged that Wygle was “confined” for a sexually violent offense, and has not asserted that he has committed a recent overt act.

When it drafted chapter 229A, the legislature was concerned about the danger posed to society by a small but dangerous group of sexually violent predators. It enacted chapter 229A with the intent that the commitment process would begin, and the petition be filed, while the person was in total confinement (prison) and before they were released into society. This was intended even if the anticipated release was subject to parole, probation, or any other kind of supervision. The legislature’s plain and unambiguous language shows clearly what it intended. Because the legislature found sexually violent predators to be so dangerous that they must be confined in secure facilities, the legislature intended to protect

society from them in the only way it could – by ensuring that they are moved from total confinement in prison to total confinement in a secure facility without being released into the public, even if such a release is supervised in some fashion.

The chapter 229A petition against Wygle was filed after he was released into the community after completing the total confinement portion of his sentence. Wygle was not “confined” at the time of said petition as is required by Iowa Code section 229A.3(1)(a), so the petition against him was improper and should be dismissed.

For the foregoing reasons, Wygle prays the Court to reverse the judgment of the district court, and to remand this case to the district court for dismissal of the State’s petition.

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

Counsel for the Respondent-Appellant respectfully requests to be heard in oral argument upon the submission of this case.

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ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$0, and that amount has been paid in full by the Office of the State Public Defender.



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Dated: April 24, 2017